

Don't let politics influence the FCC's decision on this merger. Deny it because the facts don't support AT&T's claims and the merger goes against the public interest.

FCC, DOJ roadblocks dim prospects for AT&T/T-Mobile merger

The aura of inevitability that once surrounded the merger of AT&T and T-Mobile is long gone.

With the Justice Department suing to stop AT&T's proposed purchase of T-Mobile, and the Federal Communications Commission taking a hard look at it, the prospects for the deal appear to be dimming by the day.

In March, the companies announced the \$39 billion merger, and said it would create the nation's largest wireless carrier. The deal won the support of 77 House Democrats and major unions as AT&T pulled out all the stops in an aggressive lobbying campaign to win regulatory approval.

The company promised the deal would improve cell service and create as many as 96,000 American jobs.

But in August, the Justice Department threw up a roadblock to AT&T's plans when it filed a lawsuit arguing the deal would violate antitrust law by stifling competition in the wireless market. AT&T says it is willing to negotiate to address the agency's concerns but is ready to fight to save the deal in court.

"As we have previously stated, we are working on parallel paths ? seeking a solution that addresses the DOJ's concerns while simultaneously preparing for trial," an AT&T spokesman said in an email. "We remain confident that we will reach a successful conclusion and look forward to delivering the merger benefits."

AT&T also needs the Federal Communications Commission to approve the transfer of T-Mobile's wireless licenses. The Commission will approve the transfer only if it determines that the deal is in the public's interest.

When the Justice Department filed suit, it seemed at first that the FCC would put its review on hold. But on Thursday, Rick Kaplan, chief of the FCC's Wireless Bureau, wrote to AT&T to ask for more evidence to support the claim that the merger would create thousands of jobs.

Kaplan said AT&T's data about jobs "remains incomplete" and the company "to date has produced almost nothing in response" to the FCC's previous request for more data.

While job creation is not relevant to the Justice Department's antitrust case, with unemployment hovering over 9 percent, the issue could be critical to the FCC's decision.

Andrew Schwartzman, vice president and policy director for Media Access Project, a public interest law firm that opposes the deal, said the FCC's request shows the agency is "running out of patience."

"The politics and the messaging of this case from the outset was that AT&T was trying to create a sense of inevitability," Schwartzman said. "With the Justice Department's action and with the FCC appearing more impatient, I don't know anyone who thinks this thing is inevitable."

He said he expects the FCC to send the case to an administrative law judge who would hold hearings and evaluate evidence. The agency's commissioners would then vote on whether to approve the deal.

AT&T argues that administrative hearings are unnecessary.

Larry Downes, a senior fellow at the think tank Tech Freedom, said Kaplan's letter does not necessarily mean the FCC is getting ready to kill the deal. "This is the FCC saying, 'Hey, we're still here,'" Downes said.

He speculated that the letter might indicate that the FCC has inside information that the Justice Department is working towards a settlement with AT&T, and so the Commission decided to reboot its review.

Downes said it is highly unlikely that the FCC would approve the deal so long as the Justice Department's case is ongoing, although it is possible that the agency would reject the deal before the case is resolved.

But Downes questioned whether FCC Chairman Julius Genachowski has the appetite for a big political battle over the issue. He said Genachowski might have been chastened by the blowback he received over the net-neutrality rules adopted by the commission last year.

"He seems not to be so big on bold moves since then," Downes said.

He also noted that Genachowski needs congressional support for many of his major initiatives and may not want to anger lawmakers by blocking the deal. In addition to the 77 House Democrats who support the deal, 100 House Republicans urged President Obama to drop the Justice Department lawsuit last month.

If the FCC does reject the merger, AT&T can still appeal the decision, opening up a second trial in federal court.